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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/594,054

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Bernd Sievernich

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6080

6449

7590

07/23/2009

ROTHWELL, FIGG, ERNST & MANBECK, P.C.

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WASHINGTON, DC 20005

EXAMINER

SULLIVAN, DANIELLE D

ART UNIT

PAPER NUMBER

1616

NOTIFICATION DATE

DELIVERY MODE

07/23/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/594,054	<b>Applicant(s)</b> SIEVERNICH ET AL.	
	<b>Examiner</b> DANIELLE SULLIVAN	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 1, 3-18 are pending examination. Claims 16-18 were added in the amendment filed 3/30/2009.

### ***Withdrawn rejections***

Applicant's amendments and arguments filed 3/30/2009 are acknowledged and have been fully considered. Applicant's amendment has necessitated a new rejection in response to the amendment that replaces "comprising" with "consisting essentially of". Applicant's definition is interpreted as not allowing for additional essential components and prohibiting the presence of component A as disclosed in the Kibler reference. Any rejection and/or objection not specifically addressed below are herein withdrawn.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hacker et al. (6,677,276).

### **Applicant's Invention**

Applicant claims a synergistic composition comprising imazamox and at least one chloroacetamide. Claims 3 and 11 specify the chloroacetamide is selected from

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metazachlor, metolachlor and dimethenamid. Claims 4 and 12 specify the chloroacetamide is metazachlor. Claim 5 specifies the mixture comprises one inert liquid and/or solid carrier.

Applicant claims a method of controlling undesired vegetation comprising applying the composition before, during and/or after emergence. Claim 7 and 8 specify the crop are tolerant or resistant, eg. maize, rice, oilseed rape, etc. Claims 9 and 10 specify the crop is brassica napus, oilseed rape. Claim 13 specifies a further component C) is added selected from clomazone and atrazin. Claim 14 specifies the application rate is 5-2500 g/ha.

Applicant claims a synergistic mixtures comprising imazamox and a mixture of metazachlor and quinmerac. Applicant claims a method of controlling weeds by applying the mixture to brassica napes, oilseed rape.

### **Determination of the scope and the content of the prior art**

#### **(MPEP 2141.01)**

Hacker et al. teach compositions for controlling harmful plants in oilseed rape comprising herbicide combinations of A + B, where A is at least one herbicide selected from imazamox and B is selected from metazachlor, clomazone and quinmerac. (abstract). Synergistic effects from the combinations are greater than individual ingredients when used alone (column 3, lines 23-34). Application rates for imazamox range from 2-150 g/ha, for metazachlor 100-3000 g/ha, for quinmerac 50-1000 g/ha

(column 6, line 1, 66 and 67; column 7, lines 1 and 30-32). Customary liquid and solid carriers are anticipated (column 13, line 58 through column 15, line 7).

### **Ascertainment of the difference between the prior art and the claims**

#### **(MPEP 2141.02)**

Hacker et al. do not disclose an example comprising imazamox, metazachlor and quinmerac, however, a synergistic formulation is anticipated by combination of A) selected from imazamox with B selected from metazachlor and quinmerac.

### **Finding of prima facie obviousness**

#### **Rationale and Motivation (MPEP 2142-2143)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the teachings of Hacker et al. to further formulate a composition comprising imazamox and a mixture of metazachlor and quinmerac. One would have been motivated to formulate the composition because Hacker et al. teach that synergy results from the combination. Claims 1, 3, 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fenderson et al. (US 5,905,060) in view of Kocur et al. (US 2002/0042345).

### **Applicant's Invention**

Applicant claims a synergistic composition comprising imazamox and at least one chloroacetamide. Claim 3 specifies the chloroacetamide is selected from metazachlor, metolachlor and dimethenamid. Claim 5 specifies the mixture comprises one inert liquid and/or solid carrier.

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Applicant claims a method of controlling undesired vegetation comprising applying the composition before, during and/or after emergence. Claim 7 and 8 specify the crop are tolerant or resistant, eg. maize, rice, oilseed rape, etc.

**Determination of the scope and the content of the prior art**

**(MPEP 2141.01)**

Fenderson et al. teach synergistic dimethenamid compositions preferably combinations with imidazolinone herbicides (abstract; column 2, lines 49-51; column 6, lines 34 and 54-56; claim 1, 7). Co-application of dimethenamid with at least one other herbicide results in better and in some cases longer-lasting control of undesired plant growth. Additionally, at any rate the degree of control is higher than the additive effect obtained for the individual components at the same rate (column 1, lines 45-54). Both pre- and post-emergence application is anticipated (column 4, lines 48-51). The compositions contain diluents which are either liquid or solid (column 4, lines 1-13). Example 3 anticipates methods of treating maize with the formulations.

**Ascertainment of the difference between the prior art and the claims**

**(MPEP 2141.02)**

Fenderson et al. does not teach the specific imidazolinone is imazamox. It is for this reason that Kocur et al. is joined.

Kocur et al. teach imazamox is an imidazolinone [0021].

**Finding of prima facie obviousness**

**Rationale and Motivation (MPEP 2142-2143)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Fenderson et al. and Kocur et al. to formulate a synergistic composition comprising imazamox and dimethenamid because Fenderson et al. teach combining dimethenamid with imidazolinones and Kocur et al. teach that imazamox is an imidazolinone.

Claims 4, 9-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fenderson et al. (US 5,905,060) in view of Kocur et al. (US 2002/0042345) and in further view of Duckworth (US 5,538,938).

#### **Applicant's Invention**

Applicant claims a synergistic composition comprising imazamox and at least one chloroacetamide. Claim 4 specifies the chloroacetamide is metazachlor.

Applicant claims a method of controlling undesired vegetation comprising applying the composition before, during and/or after emergence. Claims 9 and 10 specify the crop is brassica napus, oilseed rape. Claim 13 specifies a further component C) is added selected from clomazone and atrazin. Claim 14 specifies the application rate is 5-2500 g/ha.

#### **Determination of the scope and the content of the prior art (MPEP 2141.01)**

The teachings of Fenderson et al. and Kocur et al. are addressed in above 103(a) rejection. Fenderson et al. further teaches that other herbicides may be added to the formulations including metazachlor, atrazin and clomazone (column 6, lines 11,

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20 and 42). Fenderson et al. teaches the application rate is 100-3000 g/ha for imidazolinone and 250-1500 g/ha for dimethenamid (claims 8 and 9).

### **Ascertainment of the difference between the prior art and the claims**

#### **(MPEP 2141.02)**

Fenderson et al. and Kocur et al. do not teach the chloroacetamide is metazachlor or that the crop treated is oilseed rape. It is for this reason that Duckworth is joined.

Duckworth teaches formulations of 2-chloroacetamide herbicides and imidazolinone herbicides complement each other in activity when mixed (abstract; column 1, lines 30-32). The formulation is applied pre- or post-emergence to control weeds in oilseed rape (column 1, lines 18-23). Metazachlor may be selected from a finite number of 8 different 2-chloroacetamides (column 8, lines 36-42). In view of In re Susi, 169 USPQ 423 (C.C.P.A. 1971), combination for the same purpose of one additive disclosed in the prior art and another suggested by prior art is at least prima facie obvious. Hence, substituting metazachlor in place of dimethenamid in the synergistic formulation would have been prima facie obvious to one of ordinary skill in the art.

### **Finding of prima facie obviousness**

#### **Rationale and Motivation (MPEP 2142-2143)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Fenderson et al., Kocur et al. and Duckworth to

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formulate a synergistic composition comprising metazachlor. One of ordinary skill would have been motivated to substitute metazachlor in place of dimethenamid because Fenderson et al. teach combining metazachlor in the synergistic formulations and Duckworth teaches formulations comprising metazachlor and imidazolinones.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Fenderson et al., Kocur et al. and Duckworth to treat oilseed rape with the formulation. One of ordinary skill would have been motivated to utilize the composition on oilseed rape because Duckworth teaches formulations comprising metazachlor and imidazolinones are applied to oilseed rape to control weeds pre- and post-emergence.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danielle Sullivan whose telephone number is (571) 270-3285. The examiner can normally be reached on 7:30 AM - 5:00 PM Mon-Thur EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Art Unit 1616

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